



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248
Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA060081

Petitioners, Jenn and Sidhu Gangadharan applied to the Board of Appeals for zoning relief to construct a window dormer and to convert the fourth floor attic into habitable space to be combined with their condominium dwelling unit on the third floor of the existing three family dwelling at 124 Davis Avenue.

On November 30, 2006, the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed January 25, 2007, at 7:15 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published January 4 and 11, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: JENN and SIDHU GANGADHARAN

Location of Premises: 124 Davis Avenue BRKL

Date of Hearing: 01/25/2007

Time of Hearing: 07:15 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th. Floor

A public hearing will be held for a special permit and/or variance from:

- 1) 5.20; Floor Area Ratio; Variance Required.**
- 2) 5.30; Maximum Height of Buildings; Variance Required.**
- 3) 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 4) 5.60; Side Yard Requirements; Variance Required.**
- 5) 5.61; Projections into Side Yards; Variance Required.**
- 6) 8.02.1; Alteration or Extension; (Non-conforming use – three family residence in a T-5 Zone); Special Permit.**
- 7) 8.02.2; Alteration or Extension; Special Permit Required, of the Zoning By-Law to construct a window dormer and to convert the attic into habitable space to be combined with the dwelling unit on the third floor per plans at 124 DAVIS AVE BRKL.**

Said Premise located in a T-5 District.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Diane Gordon and Board members Enid Starr and Lawrence Kaplan. Attorney Ronny Sidney, 370 Washington Street, Brookline, presented the case before the Board.

Attorney Sydney described the project as the expansion of the third floor condo into the fourth floor attic. The condominium documents specify this expansion as an exclusive right of the petitioners. The

petitioners, Jenn and Sidhu Gangadharan, propose to expand into the attic space to accommodate their growing family. They would like to construct a seven foot wide shed dormer opposite the roof's existing gable dormer and finish the attic space to make it habitable. The new space would provide 778 s.f. of additional floor area for three bedrooms, two bathrooms, a laundry area and a home office. Attorney Sydney described the relief requested as floor area ratio relief in the form of a variance from §5.20 since the FAR currently is 4,432.13 s.f., a pre-existing non-conforming condition. The petitioners propose to increase the FAR to 5,210.19 s.f., an increase of 20% and 10% more than allowed by Special Permit. Also, the height of the building although not being changed is 47 feet while the maximum height allowed for the district is 35 feet. Once again there is a pre-existing non-conforming condition that needs relief from zoning. In accordance with §8.02.1 and 8.02.2 the Board could grant a Special Permit, allowing the alteration or extension of a non-conforming structure. While the footprint of the building is not being changed, the existing side set-back is 6-10 feet and a minimum of 20 feet is required. Attorney Sydney stated that the Board could under §5.43 waive the dimensional requirements if counterbalancing amenities are provided. She stated that the owners will be providing additional landscaping. Attorney Sydney stated that although this dwelling is very similar to others in their neighborhood, their lot is considerably different in shape. While most of the neighboring lots are rectangular and relatively long, the lot at 124 Davis Avenue is short and somewhat square and does not go back to the MBTA tracks as do the others. This is due to the fact that there is a parking lot behind this property with an entrance around the corner on Elm Street. Other homes in the vicinity are similar in structure to this one and in fact, Phillip Kramer, who lives on Davis Avenue, and is the Design Architect for this proposal, did a very similar expansion. Due to the unusual shape of the lot, Attorney Sydney stated that the petitioners could not do by right that which many of their neighbors

have already done. In support of the variance she stated it would be a hardship to her clients if they could not expand their space since they could no longer afford to stay in Brookline. Attorney Sydney stated that there would be no substantial detriment to the public good, since no change will be visible from the street and the project does not nullify or in any way derogate the intent of the bylaw, it does not expand the footprint but it does allow the family to expand.

The Chair then asked whether anyone wished to speak in favor of the petitioners. Peter Nigrovic of 109 Davis Avenue, unit #3, a neighbor across the street, spoke in support and stated that he would like to keep the petitioners as neighbors. Paul Walsh, also of 109 Davis Avenue, unit #2 also spoke in favor, endorsing Mr. Nigrovic's comments. Molly Paul of 128 Davis Road, unit #1, next door spoke in favor of the proposal and stated how important it is to have neighbors raising children in the neighborhood. Christopher Boyd of 117 Davis Avenue stated he had seen the plans and wished to speak in favor of the proposal.

No-one rose in opposition to the project.

Planner, Lara Curtis, then reviewed the comments and recommendations of the Planning Board: She stated that the applicant proposes to construct a seven-foot-wide shed dormer opposite the roof's existing gable dormer and finish the attic space, combining the floor area with the third-floor unit. A number of skylights will be installed in the roof to provide sunlight. The new dormer will have two double-hung windows. An additional 778 s.f. of floor area would be provided for three bedrooms, two bathrooms a laundry area and an office. Ms. Curtis described the relief requested as follows:

Section 5.20 – Floor Area Ratio

Section 5.30 – Maximum Height of Buildings

Section 5.60 – Side Yard Setback

Section 5.61 – Projections into Side Yards

	<u>Required/Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
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Floor Area	4,014 s.f. / 4,816.8 s.f. (120% by special permit)	4,432.13 s.f. (110%)	5,210.19 s.f. (130%)	<u>Variance</u>
Height	35 feet	47 feet	47 feet	<u>Variance*</u>
Side Yard Setback	20 feet	6 feet – 10 feet	6 feet – 10 feet	<u>Variance / Special Permit**</u>

*Sections 8.02.1 and 8.02.2 – a special permit may be granted to alter or extend a non-conforming structure and/or use.

**A special permit under Section 5.43 to waive dimensional requirements may be granted provided that counterbalancing amenities are provided.

Ms. Curtis reported that the Planning Board supports this proposal to construct a dormer and finish the attic space of the existing three-family dwelling. The required alterations to the structure to finish the attic are minimal, would barely be visible from the street, and would not have a detrimental impact on abutters. Though the structure is similar in size and style to other dwellings in the neighborhood, including its nearest east-side abutter, which already has converted attic space, the lot at 124 Davis Avenue is smaller due to the lots to the rear of the property, which are used for neighborhood parking.

Therefore, should the Board of Appeals determine the proposal meets the requirements for a variance, the Planning Board recommends approval of the plans entitled Gangadharan Residence, prepared by Frank P. Janusz, Architect of Record, and last dated 9/20/06, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations with material specifications must be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan must be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. The color and siding for the dormer must be the same as the rest of the structure.
4. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) final building elevations stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that the relief requested could be granted by Special Permit and Variance. He outlined the relief required:

1. Since the structure is a three family home in a two family district, relief in the form of a Special Permit is required under §8.02.1 of the by-law, for an alteration of a pre-existing non-conforming use.
2. Since the structure is pre-existing, non-conforming as to set back, and height and the proposed dormer is closer to the lot line and higher than allowed; relief is also needed in the form of two additional Special Permits, §5.43 for the side yard and §8.02.2 for the height.
3. Since the project exceeds the square footage allowed by Special Permit, a variance from §5.20 (Floor Area Ratio) is required

Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Chair then publicly complimented the Architect for a very professional presentation especially the zoning analysis and the photographs.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under **Sections 8.02.1, 8.02.2 and 5.43** of the Zoning Bylaw and makes the following findings pursuant to **Section 9.05**:

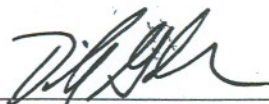
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Board Member Enid Starr stated that the Board can grant relief in the form of a Variance from **Section 5.20** where the Board specifically finds that owing to circumstances relating to the shape, or topography of such land but not affecting generally the zoning district in which it is located, a literal enforcement of the by-law would involve substantial hardship to the petitioner and granting of the relief would not be detrimental to the public good nor nullify or substantially derogate the intent or purpose of the by-law. After discussion, the Board agreed that the petitioner met the requirements for relief in the form of a variance because of the unusual shape of the lot and voted unanimously to grant all the Variance and Special Permit relief with the following conditions:

1. **Prior to the issuance of a building permit, final plans and elevations with material specifications must be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **Prior to the issuance of a building permit, a final landscaping plan must be submitted to the Assistant Director for Regulatory Planning for review and approval.**
3. **The color and siding for the dormer must be the same as the rest of the structure.**
4. **Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) final building elevations stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

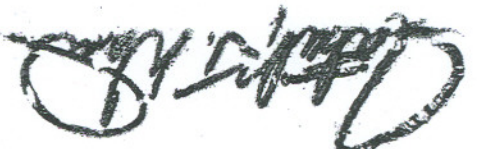
Unanimous Decision of
The Board of Appeals


Diane R. Gordon

Filing Date: February 2, 2007

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Patrick J. Ward
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